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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/742,899	12/23/2003	Willy Lorscheidt	19559	7099
26480	7590	10/15/2004	EXAMINER	
LAWRENCE E. LAUBSCHER, SR. LAUBSCHER & LAUBSCHER 745 SOUTH 23RD STREET, SUITE 300 ARLINGTON, VA 22202			NICOLAS, FREDERICK C	
			ART UNIT	PAPER NUMBER
			3754	

DATE MAILED: 10/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/742,899	Applicant(s) LORSCHIEDT, WILLY	
	Examiner Frederick C. Nicolas	Art Unit 3754	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input checked="" type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. <u>10/7/2004</u> . |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>5/3/04</u> . | 6) <input type="checkbox"/> Other: _____. |

DETAILED ACTION

1. The preliminary amendment filed on 5/3/2004 (claims 1-17) and 6/24/2004 have been entered.

Specification

2. The abstract of the disclosure is objected to because of legal phraseology "comprising and means" throughout the abstract, such terminology should be avoided in the abstract. Correction is required. See MPEP § 608.01(b).
3. The abstract of the disclosure is objected to because it exceeds 150 words in length. It is important that the abstract does not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. Correction is required. See MPEP § 608.01(b).
4. The disclosure is objected to because of the following informalities: on page 15, line 26, "valve 30" should be --valve 21--.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
6. Claims 1-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
7. As to claim 1, lines 1 and 2, the phrase "paste-like" renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by

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"or the like"), thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d).

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1-7, 13-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Czech 4,685,594.

Czech discloses a dispenser for paste products (col. 1, ll. 5-15), which comprises a substantially cylindrical container (2) with a follower piston (5), which is slidingly displaceable on an inner wall of the container under pressure of the external atmosphere (col. 2, ll. 53-68 onto col. 3, ll. 1-15), a headpiece (7) which is slidingly displaceable relative to the container and comprises a discharge channel (19) for the product, a delivery chamber (15) of a variable volume for the product, the delivery means comprising a delivery element (8) which is longitudinally displaceable relative to the container and the headpiece and includes a delivery piston which is slidingly displaceable in the delivery chamber and is connected to a delivery shaft (23) which circumferentially surrounds a delivery channel which comprises a delivery channel inlet opening (30) communicating with the delivery chamber and a delivery channel outlet opening as seen in Figure 2, the discharge channel is configured to extend laterally relative to the longitudinal direction of the delivery channel that the delivery channel

outlet opening is arranged on the circumferential surface of the delivery shaft and, starting from an initial position in which the delivery channel outlet opening is closed by a bushing (28) formed on the headpiece, can be brought by a displacement movement of the delivery element relative to the headpiece into a position in which the delivery channel outlet opening is exposed relative to the discharge channel (col. 5, ll. 54-68 onto col. 6, ll. 1-12), entraining means (25,27), an inner sleeve (12), a mating headpiece (14), a closure member (20).

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Czech 4,685,594.

Czech has taught all the features of the claimed invention except that the closure member is integral with a coating formed at least at the front side on the outside of the headpiece.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the closure member integral with a surface on the outside of the headpiece, since it has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art. *Howard v. Detroit Stove Works*, 150 U.S. 164 (1893).

Allowable Subject Matter

12. Claims 8-12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Czech 4,856,679, Czech 4,875,604, Hargraves et al. 6,013,270, Czech 4,515,298, Birmelin 5,152,434, Birmelin 5,152,434, Bossina Re. 33,247 and Corsette 4,890,773 disclose other types of dispenser for paste-like products.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frederick C. Nicolas whose telephone number is (703)-305-6385. The examiner can normally be reached on Monday - Friday from 9:00 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mancene L. Gene, can be reached on 703-308-2696. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you

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have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

FN
October 7, 2004

A handwritten signature in black ink, appearing to read 'F. C. Nicolas', with a date '10/7/04' written to the right of the signature.

Frederick C. Nicolas
Patent Examiner
Art Unit 3754